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FILED

No. 00-464 SEP 16 2000

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IN THE
Supreme Court of the United States

ALEXANDER GEE, individual and on behalf of a class person similarly situated,
Petitioners,

v.

3900 CORP., a Maryland corporation successor by merger to AGM INDUSTRIES, INC., a Delaware Corporation, JOEL WINEGARDEN, PRICKETT, JONES, ELLIOTT, KRISTOL & SCHNEE, a Delaware Corporation, and JOHN H SMALL,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

ALEXANDER GEE
16737 Foothill Boulevard
Fontana, California 92335
Phone: (909) 823-2329
Pro Se

QUESTION PRESENTED

I. Is false inference of fact and law a violation of Federal Rule of Civil Procedure, Rule 11, lawyer has duty not to misrepresent evidence in argument before court? If so, does court have duty in disciplinary action to examine evidence and determine for itself judgment to be entered?

II. If not, does misstatement of fact and law be admitted as motion to dismiss?

LIST OF PARTIES

Pursuant to Rule 14.1(b) and Rule 29.7, the following list identifies all parties to be proceeding before the United States Court of Appeals for the Ninth Circuit.

3900 CORP, suceessor by merger to AGM Industries,Inc., (hereinafter "3900 CORO), appellees and defendant below is not a public held company.

Prickett, Jones, Elliott, Kristol & Schnee (hereinafter "Prickett, Jones") appellees and defendants below is not public held company. These defendants-appellees had been failed and/or refused to file response in the Court of Appeals for the Ninth Circuit.

Joel Winegarden, appellee and defendant below.

Donnis S Ellis, attorney for defendants-appellees below.

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IN THE
Supreme Court of the United States

No. _____

ALEXANDER GEE, individual and on behalf of a class person similarly situated,
Petitioners,

v.

3900 CORP., a Maryland corporation successor by merger to AGM INDUSTRIES, INC., a Delaware Corporation, JOEL WINEGARDEN, PRICKETT, JONES, ELLIOTT, KRISTOL & SCHNEE, a Delaware Corporation, and JOHN H SMALL,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

Alexander Gee, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeal for the Ninth Circuit which plagued by misrepresentation and abandoned sanction against the attorney for putting false evidence before the Court.

OPINION BELOW

The order of the Ninth Circuit denyinng petitioner for rehearing and suggested for rehearing en banc is reprinted at Pet. App. 1a-2a. The memorandum of the Ninth Circuit is reprinted at App. Pet. 3a-5a.

The order of the United States District Court for Central California granted 3900 CORP's motion to dismss with prejuice is reprinted at Pet . App. 6a-7a. The order granted Prickett, Jones's motion to dismiss with prejudice is reprinted at Pet. App. 8a-11a.

JURISDICTION STATEMENT

On 3 March 2000, the Ninth Circuit of Appeals voted to deny petitioners' petition for rehearing, Pet App 1a-3a. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3). This petition is filed within the 60 days extension of July 18, 2000.

STATUTORY PROVISION INVOLVED

United States Constitution,

Amendment XIV

Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of laws.

California Corporation Code:

Section 2011(c),

A disolved corporation contines to exist indefinitely for purpose of being quiet action

Delaware General Corporation Law

8 Section 262(k)

> Notwithstanding the forgoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without approval of the Court, and such approval may be considered upon such terms as the Court deems just

8 Section 262(l)

> The shares of surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to merger or consideration shall have the status of authorized and unused shares of surviving or resulting corporation

STATEMENT OF THE CASE

Petitioner complaint against respondent for depriving property interest encompassed due process are for unclaimed interest income report to the Unclaimed Property Division of the State of Maryland, Pet App 12a. Petitioner has right to receive interest decleared by 3900 CORP. In addition, he also has right to received interest payment on AGM shares and none had been pay by the defendent

Prickett, Jones is 3900 CORP's attorney in the said case *Schottler v. 3900 CORP*, civil action No 8089 and in *Weinberger v. UOP Inc.* 457 A 2d 701, he is petitioner's attorney in the Delaware state court of chancery. In *UOP*

Inc., the Delaware Supreme Court state that "proof of value by any technique or methods which are general considered acceptable in the financial community and other wise admissible in court" should be considered in appraisal proceeding, but in *UOP Inc.*, Prickett, Jones conspired with his opposition entered stipulation "Directly Contrary" to the authority he received and using methods of abused discretion inin an unlawful act. Petitioner intervened and motioned Prickett, Jones to prodduce record and document for valuation This is relevant discovery because 3900 CORP has a shareholder equity of over 300 millions dollars. All indication from proxy are 3900 CORP is a shall company. It has no paid in capital, no produce and service, and the merger was paid out of AGM's retained earning. Prickett, Jones failed to respond to discovery request in the court below is an act of willfulness of putting false evidence argument before the court in valuation of AGM shares.

The last order entered in *Schottler v. 3900 CORP* is to "..... Dismissed with prejudice to all former AGM shareholders with the exception of Mr, Gee". Thereinafter, petitioner's AGM shares has the status of authorized and unissued shares of 3900 CORP and petitioner filed application for default judgment in Chancery without any opposition from the respondent. This is an offer and invitation of 3900 CORP to buy petitioner's AGM shares and petitioner has no respond from the respondents.

Prickett, Jones refused discovery and abused appraisal proceeding in chancery and let controlling shareholders buy out entire stock corporation at a price determined by them is a violation of Section 10(b) and petitioner filed complaint with SEC against the respondents. After ten years, petitioner received a small distribution from UOP Inc. litigation and an unclaimed interest report from

the State of Maryland by 3900 CORP in the year of 1995. But this is not an agreement to buy petitioner's AGM shares. Accordingly, it is a willful act of deprived property interrest without due process of law.

Petitioner's 3900 CORP shareholder status has right to receive notice and distribution with property interest encompassed due process clause and there are no agreement in transferring of petitioner's AGM shares to the respondent Pursuant to California Corporation Code Section 2011 (c), a dissolved corporation to exist indefinitely for purpose of being sue in quiet title action. Complaint filed against the respondent because there are no agreement on interest income are payment of petitioner's AGM shares. Prickett, Jones is a joiner of defendants in depriving petitioner's property interest without due process of law.

REASON FOR GRANTING THE PETITION

1 Court Erred in Dissmissed Complaint

Petitioner's averment on appeal from Panel's error on application of statute limitation is open to review by this Court because petitiner have contradicted Panel's error in the running of petitioner's AGM shares in court below because the clock of Petitioner's shares stop running in chancery for appraisal proceeding with right of 3900 CORP's authorized and unissued shares by law. Therefore. The question of law is whether or not Ellis made false statement of fact and law in his motion to dismiss in the district court for 3900 CORP litigation and Ellis failed and refused to answer whether or not Prickett, Jones had violation the Delaware Supreme Court Authority in *UOP Inc.*, litigation because petitioner's opposition to dismiss appraisal proceeding in chancery had not been deny. Accordingly, Ellis' motion to dismiss for failure to state a claim by misstatement of fact and law

raise an important of federal law because court has duty in disciplinary issue raise by petitioner to examine evidence and determine for itself judgment to be entered. These questions has not been address by the Panel and should be settled by this Court's supervisory power because petitioner's property interest encompassed by due process clause cannot by respondents' false inference of statute of limitation in appraisal proceeding and false inference of personal statute.

2 Respondents' Misstatement of Fact and Law

Prickett. Jones' attorney, Ellis knew UOP Inc., stipulation to dismiss in the chancery are "Directly Contrary" to the Delaware Supreme Court's Authority on *UOP Inc.* Pet p.2, and 3900 CORP made false claim acquired petitioner's AGM shares in the year of 1996 because petitioner did not tendered his shares. Ellis' false statement of fact and law claim in appraisal proceeding is a violation of civil right acts. The judicial notice taken by Ellis in his motion to is a misstatement of evidence in argument before court and the chancery did not return petitioner's default application and petitioner's appraisal proceeding did not dismissed in chancery. Ellis' claims had been contradicted in court.

3 False Inference of Limitation Action

Respondents had violated civil right act in 1996 and not in the year of 1985 because the unclaimed deposit report was made in the year of 1996 and there are no agreement in valuation of petitioner's AGM shares. Accordingly, there are no violation of the civil rights act before to the year of 1996 in buying and selling security because respondent's unclaimed interest income report is not payment of security.

Respondent's interest report is less than stipulation offer of $7,8500, or $3,5000 plus $3,800.00 for interest filed in chancery. It is also less than petitioner's demand of $50,000 plus $55,000 interest demanded in default judgment filed, a violation deprived property interest without due process.

Ellis' one year of statute of limitation It is misstatement of fact and law. Lawyer cannot mistake law. Ellis' false inference are property interest loss is personal loss, and personal loss is personal injury, personal injury is a bodily injury of a policeman, one year. Ellis also misled of petitioner having knowledge in 1985 for what 3900 CORP doing in unclaimed report in 1996. A false inference if eleven years. These are mixed fact and mixed law. "Mixed facts and mixed law and conclusion of law are not admitted as motion to dismiss" *Hess v. Petrullo*" D. C. Ind. 1958, 259 F 2d 735, certiorari denied 79 S Ct 743, 359 U.S. 954.

Prickett, Jones are not free to violated petitioner's constitutional right affirmed by the highest state court in *UOP Inc.* because his stipulation approved by the vice chancellor. Ellis' proposed order granting to dismiss had been affirmed by the district court below without finding fact and conclusion of law is a violation of Ninth Circuit for pro se litigants to amen complaint because Ellis' proposed order in whole or in part had been contradicted by petitioner aas false evidence in argument before court. 3900 CORP's local attorney, Katherine Butt Warwick had leave to withdraw because her motion to dismiss baed on Ellis' false evidence in argument before court. In addition, Ms. Warwick also agreed in writing to compensate petitioner's opposition filing should Judge Lew address the issue. Judge Lew refused argument on Pro Hac Vice replacement of Ms. Warwick.

The opinion below is based of the mixed facts and law of the defendants' motion dismiss for failure to state a claim and mixed facts and mixed law are not admit as motion to dismiss. The opinion below also inconsistent with the Ninth Circuit legal standards for motion to dismiss and for imposition for filing a brief not well ground in fact and not made after reasonable inquiry is mandatory.

The legal standards is court must accept as true all material allegation in complaint as well reasonable inference from them. If so, the trial court below must accept the uncontested default judgment application filed in chancery for petitioner's AGM shares with right of 3900 CORP authorized unissued shares for relief consideration sought in complaint or until petitioner agreed on the valuation of his AGM shares

The order enter below granting defendant's motion to dismiss submitted by Katherine Butts Warwick for July 13, 1998 was pursuant to Rule 12(b)(6) and not pursuant to Rule 6(b) as granted by the court, Pet App 6a-7a. Accordingly, the dismissal by the district court below are *coram non judice* and void because the issue are not parties present in their pleading.

The memmorandum entered in the Court of Appeals below was without an oral argument at the suggestion of the Panel, if so, the Panel failed and refused to address the issues presented by petitioner as to the defendants-appellees, Prickett, Jones' violation of Rule 11 in their motion to dismiss for failure to state a claim is an act of prejudicial to the administration of justice.

CONCLUSION

This petition would argue that the courts below have stray from fundamental principle and constitutional requirement that no person be deprived of rights that come within the protection of Section 1 of the Fourteen Amendment but by due process of law. The above entitled action are just one of the many misrepresented evidence in argument before the Ninth Circuit courts. "The Ninth Circuit courts are plagued by misrepresentations", said Circuit Judge Noonan.

For reasons stated, petitioner urges that a writ of certiorari issue to review the opinion of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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Phone: (909) 823-2329
Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER GEE, individual and on behalf of a class of persons similarly situated,

Plantiff-Appellant,

v.

3900 CORPORATION; JOEL WINEGARDEN,

Defendants-Appellees.

No. 98-56483

D.C. No. CV-97-05689-RSWL

ORDER

Filed March 03, 2000

Before: LEAVY, TROTT, and SILVERMAN, Circuit Judges

The panel has voted to deny appellant's petition for rehearing. Judges Trott and Silverman have voted to deny appellant's petition for rehearing en banc, and Judge Leavy so recommends.

The full court has been advised of the petition for rehearing en bane and no judge has requested a vote on

whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be asserted in this closed appeal.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER GEE, individual and on behalf of a class of persons similarly situated,

Plantiff-Appellant,

v.

3900 CORPORATION; JOEL WINEGARDEN,

Defendants-Appellees.

No. 98-56483

D.C. No. CV-97-05689-RSWL

MEMORANDUM[1]

Submitted December 13, 1999[2]

Before: LEAVY, TROTT, and SILVERMAN, Circuit Judges.

Alexander Gee appeals pro se the district court's dismissal of his action for common law fraud and breach of

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

fiduciary duty, violations of the Securities Act of 1934 and Del. Code Ann. tit. 8, § 262, and deprivation of federal civil rights under 42 U.S.C. §§ 1981, 1982, and 1983. We have jurisdiction under 28 U.S.C. § 1291. We review de novo both a dismissal under Fed. R. Civ. P. 12(b)(2), *see Vaccaro v. Dobre*, 81 F.3d 854, 856 (9th Cir. 1996), and a dismissal under 12(b)(6), *see Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9th Cir. 1998). We affirm.

Because Gee knew of the appellees' alleged violations more than eleven years before filing this action, Gee's causes of action are all time-barred. *See* Cal. Civ. Pro. Code § 338(d) (imposing a three-year limitations period on actions for common law fraud running from discovery of the facts constituting fraud);[3] Del. Code Ann. tit. 8, § 262 (requiring filing of appraisal action within 120 days of corporate merger); Del. Code Ann. tit. 10, § 8106 (imposing a three-year statute of limitations for fraud, breach of fiduciary duty, and actions based on a statute);[4] *Lampf, Pleva, Lipkind, Prupis, & Petigrow v. Gilbertson*, 501 U.S. 350, 359-360, 364 (1991) (holding that the statute of limitations for actions brought under the Securitites Act of 1934 does not exceed three years after the alleged violation); *Fink v. Shedler*, 192 F.3d 911, 913 (9th Cir. 1999) (recognizing that California's one-year statute of limitations applicable to § 1983 actions, like all federal causes of action, begins to run when the plaintiff knows, or should know, of the injury on which the cause of action is based);

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[3] *See also Stalberg v. Western Title Ins. Co.*, 282 Cal. Rptr. 43, 48 (Cal. Ct. App. 1991) (recognizing that four-year statute of limitations for breach of fiduciary duty begins to run when plaintiff learns of the relevant facts).

[4] *See also Becker v. Hamada, Inc.*, 455 A.2d 353, 356 (Del. 1982) (recognizing that a cause of action for fraud begins to run upon discovery of facts which would cause someone of ordinary intelligence to inquire and discover the relevant facts).

Taylor v. Regents, 993 F.2d 710, 711 (9th Cir. 1993) (per curiam) recognizing California's one-year personal injury statute of limitations as applicable to § 1981 actions); *Donoghue v. County of Orange*, 848 F.2d 926, 930 (9th Cir. 1988) (recognizing that the most appropriate statute of limitations under state law governs actions brought under [42 U.S.C. § 1982]).[5]

Because amendment would be futile, the district court did not err by dismissing Gee's complaint without leave to amend. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996).[6]

Gee's remaining contentions lack merit.

AFFIRMED.

FILED
DEC 16, 1999

Cathy A. Catherson
CLERK, U.S. COURT OF
APPEALS

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[5] *See* Cal. Civ. Proc. Code § 340(3) (imposing a one-year statute of limitations on actions to redress personal injury).

[6] Gee's cause of action for fraud based on events he discovered in 1995 was properly dismissed for failure to state a claim because he cannot allege a misrepresentation. *See Engalla v. Permanente Medical Group, Inc.*, 63 Cal. Rptr. 2d 843, 857 (Cal. 1997) (setting forth the elements of a cause of action for fraud, including the requirement of a misrepresentation).

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALEXANDER GEE, individual and on behalf of a class person similarly situated,

Plaintiffs,

vs.

3900 CORP., a Maryland corporation, successor by merger to AGM INDUSTRIES, INC., a Delaware corporation, JOEL WINEGARDEN; PRICKETT, JONES, ELLIOTT, KRISTOL & SCHNEE, a Delaware Corporation, and JOHN H. SMALL.,

Defendants.

CASE NO 97-5689RSWL(CTx)

ORDER

Date: July 13, 1998
Time: 9:00 a.m.
Place: Court

After full consideration of moving, opposition, and reply papers, the entire record in this matter, and oral argument of counsel, the Court hereby GRANTS defendant 3900 Corporation's motion to Dismiss under Rule 6(b) of the Federal Rules of Civil Procedure. The Court hereby orders that plaintiff's First Amendment Complaint is dismiss in its entirety with prejudice.

IT IS SO ORDERED.

Dated: 7-13-98

s/ Ronald S.W. Lew
The Honorable Ronald S.W. Lew
United States District Judge

ENTERED
Clerk, US District Court
Jul 15, 1998
Central District of California
by s/ Deputy

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

ALEXANDER GEE, individual and on behalf of a class person similarly situated,

Plaintiffs,

vs.

3900 CORP., a Maryland corporation, 1997 successor by merger to AGM INDUSTRIES, INC., a Delaware corporation, JOEL WINEGARDEN; PRICKETT, JONES, ELLIOTT, KRISTOL & SCHNEE, a Delaware Corporation, and JOHN H. SMALL.,

Defendants.

CASE NO 97-5689RSWL(CTx)

[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

Date: September 15,
Time: 9:00 a.m.
Place: Courtroom 21

The Motion to Dismiss and Request for Judicial Notice of defendants Prickett, Jones, Elliott, Kristol & Schnee and John H. Small (collectively "Prickett, Jones")

came before this Court for hearing on September 15, 1997, at 10:00 a.m., pursuant to the Notice of Motion duly served and filed by Prickett, Jones. Dennis S. Ellis, of Paul, Hastings, Janofsky & Walker LLP appeared on behalf of Prickett, Jones. Mr. Alexander Gee appeared pro se. After consideration of the entire record in this matter, the authorities cited to the Court by the parties, and the argument of counsel, the Court rules as follows:

The Court GRANTS Prickett, Jones' Request for Judicial Notice. Each of the documents attached as Exhibits to Prickett, Jones' Request for Judicial Notice are pleadings pertaining to the Petition for Appraisal of Stock of AGM Industries Inc., filed as Civil Action No. 8092 in the Court of Chancery for the State of Delaware in and for New Castle County (the "Appraisal Action"), thus the facts contained in those documents are capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. Accordingly, the Court takes judicial notice of the orders and proceedings pertaining to the Appraisal Action.

The Court has taken proper care to read plaintiff's pleadings liberally, as a court must do when pro se complaints are involved. However, even affording plaintiff all the deference due him as a pro se litigant, it remains apparent that his Complaint fails to state a claim against Prickett, Jones. Specifically, the Court finds that all of the acts that could have given rise to plaintiff's claims occurred over eleven years ago. As plaintiff knew or had reason to know of these acts at the time they occurred, plaintiff's claims against Prickett, Jones are barred by the applicable statute of limitations.

Further, the Court finds that the Complaint fails to allege that plaintiff was denied a right, privilege, or immunity secured by the Constitution or federal law because of his race, color, religion, sex or national origin. In addition, the Complaint fails to allege sufficient facts regarding the necessary element of state action. Thus, the Complaint fails to state a claim under the civil rights statutes alleged by plaintiff.

The Court also finds that it clearly appears from the Complaint that the deficiencies contained therein cannot be overcome by amendment, thus plaintiff should not be given leave to amend.

Based on all of the foregoing, the Court finds that plaintiff's Complaint fails to state a claim upon which relief could be granted against Prickett, Jones, and thus Prickett, Jones is entitled to a dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Accordingly, it is hereby

ORDERED that the Motion to Dismiss is GRANTED in favor of Prickett, Jones, and plaintiff Alexander Gee's Compliant is DISMISSED WITH PREJUDICE, and Prickett, Jones is entitled to an award of its reasonable costs incurred herein.

SO ORDERED this ___ day of September, 1997.

s/ Ronald S.W. Lew
Honorable Ronald S. W. Lew, Judge
United States District Court

SUBMITTED BY:

ALAN K. STEINBRECHER
TODD D. THIBODO
DENNIS S. ELLIS
PAUL, HASTINGS, JANOFSKY & WALKER LLP

BY: s/ Dennis S. Ellis
Dennis S. Ellis

State of Maryland
Compliance Division
Unclaimed Property Section
301 West Preston Street
Baltimore, Maryland 21201

NOTICE TO OWNER OF UNCLAIMED FUNDS

YOU MAY BE THE OWNER OF UNCLAIMED PROPERTY DESCRIBED BELOW WHICH HAS BEEN TURNED OVER TO THE STATE OF MARYLAND BY 3900 CORP.

Type of Property: Dividends/Interest
Holder Account/ID: Unknown
Value: $3000.00

[Instruction to file for unclaimed property deleted]

Louis L Golstein
Comptroller of Treasury

Owner SSN: 126-18-2899

Control Number: 00619015
GEE ALEX
16737 Foothill
Fontana CA
92335